

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: City of Sioux City Woodbury County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW-08
---	--

TO: Nicole M. Jensen-Harris, City
Attorney
City of Sioux City
405 6th Street
Sioux City Iowa
P.O. Box 447
Sioux City, Iowa 51102

I. SUMMARY

This administrative consent order (order) is entered into between the City of Sioux City (City) and the Iowa Department of Natural Resources (Department). The parties hereby agree to the issuance of this order concerning the City's Storm Water National Pollution Discharge Elimination System (NPDES) permit.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Tom Roos, Environmental Specialist
IDNR Field Office #3
1900 N Grand Gateway North Suite E 17
Spencer, IA 51301-2200
712/262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I,

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF SIOUX CITY**

and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

1. Under Federal Law the City is considered a small municipal separate storm sewer system (MS4). 40 C.F.R. § 122.32 (2010). Because of this classification, the City must obtain an NPDES permit from the Department, it did so in 2004. The Code of Federal Regulations requires that an operator of a Small MS4 "develop, implement, and enforce a storm water management program designed ... to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act." 40 CFR § 122.34 (a) (2010). This Federal program is incorporated by reference into the Department's administrative rules. 567 IAC 64.13.
2. The City's NPDES permit designates what the City must do to properly carry out this program; numerous provisions of this permit have been violated. Most significantly the City has failed to: (1) conduct reviews of Storm Water Pollution Prevention Plans (PPPs), (2) conduct quarterly site inspections of construction sites that disturb 1 acre or more and (3) implement a program to detect illicit discharges to the storm sewer system.
3. The failure to implement these 3 components of the MS4 program has likely resulted in significant environmental harm. The Department has documented environmental harm caused by three developers within the City and referred these developers to the Department's Legal Services Bureau for enforcement. These developers caused unpermitted discharges to waters of the state and failed to implement adequate erosion and sediment control. If the City would have been reviewing the PPPs and conducting quarterly compliance inspections it is likely that these violations would have been avoided or, at a minimum, detected sooner.
4. The Department has conducted 3 compliance inspections of the City's MS4 program, one in 2006, 2008, and 2010. Following each of these inspections the Department notified the City of its failure to properly implement the MS4 program and the steps that needed to be taken to do so. Nevertheless, the City has failed to properly implement the program and therefore, has been in significant noncompliance with its NPDES permit since it was issued on August 30, 2004.
5. The City's NPDES permit requires that it submit an annual report each year to the Department no later than September 30th. This report was submitted late in 2006, 2008, 2009, 2010 and 2011 and an Notice of Violation (NOV) was sent to the City for these violations in 2006, 2008, 2010 and 2011. On October 26, 2011, the 2011 report was submitted.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF SIOUX CITY**

IV. CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted regulations pertaining to the issuance of NPDES permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16.

2. 567 IAC 64.3(1), *Permit to Operate*, states in part:

No person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director.

The City has failed to comply with numerous provisions of its permit; therefore, the above stated facts demonstrate that the City has violated this legal requirement.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. The City shall comply with its Storm Water MS4 NPDES permit; and
2. The City shall pay a penalty of \$10,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF SIOUX CITY**

penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations and deterring this party and others from violating storm water permit requirements, is the issuance of an administrative order with an administrative penalty. The administrative penalty is determined as follows:

- a. **Economic Benefit**. The City saved a significant amount of time and money by not complying with its NPDES permit. Specifically, the City has saved a significant amount of money by not committing the necessary hours by staff to implement the MS4 program. Therefore it is reasonable to estimate that economic benefit realized by the City is \$4,000.00. Therefore, this amount is assessed for this factor.
- b. **Gravity of the Violation**. The City has continuously failed to comply with its NPDES permit since the date it was issued. This failure thwarts the integrity of the program because NPDES permits and the MS4 program are designed to protect the environment, public health and safety. And the NPDES permit is the backbone of the storm water program. The violations cited above are repeat in nature and despite notification of the violations they continue. Lastly, the Department has expended a significant amount of staff time in an effort to assist the City in achieving compliance. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are lower than those that could be obtained through judicial enforcement. Therefore, \$3,000.00 is assessed for this factor.
- c. **Culpability**. In determining the degree of intent or negligence the standard of care required by the laws of the state of Iowa should be considered. The Department asserts that the City's actions were negligent rather than intentional. Generally negligence is defined as "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation." *Black's Law Dictionary*, 470 (2nd Pocket Edition, 2001). The violations involved in this order are violations of conditions of the Iowa Code, Iowa Administrative Code and a permit issued by the Department. A reasonable person should be aware of the laws which govern their business. Further, the City was issued an NPDES permit which it did not appeal. This permit detailed the requirements to obtain compliance. The issuance of this permit is deemed constructive knowledge of those conditions. Moreover, the City failed to comply with the permitting requirements subsequent to notification from the Department that it was in noncompliance. Therefore, \$3,000.00 is assessed for this factor.

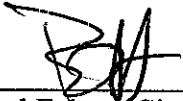
VII. APPEAL RIGHTS

Iowa Code section 455B.175(1), and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived by all parties.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
CITY OF SIOUX CITY**

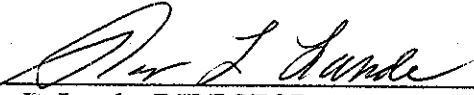
VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.



Paul Eckert, City Manager of the City of Sioux City

Dated this 13th day Feb., 2012



Roger E. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 1st day March, 2012

1 B.2. Carrie Schoenebaum; Tom Roos